
**APPEALS BOARD
UTAH LABOR COMMISSION**

RACHEL THOMAS,

Petitioner,

vs.

**UTAH STATE DEVELOPMENTAL
CENTER and WORKERS
COMPENSATION FUND,**

Respondents.

**ORDER AFFIRMING
ALJ'S DECISION**

Case No. 05-0158

Utah State Developmental Center and its insurance carrier, Workers Compensation Fund, (referred to jointly as “the Center”) ask the Appeals Board of the Utah Labor Commission to review Administrative Law Judge Hann’s award of benefits to Rachel Thomas under the Utah Workers’ Compensation Act, Title 34A, Chapter 2, Utah Code Annotated.

The Appeals Board exercises jurisdiction over this motion for review pursuant to Utah Code Annotated § 63G-4-301 and § 34A-2-801(3).

BACKGROUND AND ISSUE PRESENTED

Ms. Thomas claims workers’ compensation benefits from the Center for a work-related back injury that occurred on May 2, 2002. After an evidentiary hearing, Judge Hann excluded 317 pages of records detailing Ms. Thomas’s extensive medical history, including treatment records for kidney disease. Judge Hann then referred the medical aspects of Ms. Thomas’s claim to an impartial medical panel. Based on the panel’s report, Judge Hann concluded that Ms. Thomas’s on-going medical care, including a functional restoration program, was necessary to treat her work-related back injury and ordered the Center to pay for such medical treatment.

The Center now argues Judge Hann erred in excluding from the evidence 317 pages of medical records. Specifically, the Center argues that those excluded records, particularly those related to Ms. Thomas’ kidney disease, might have suggested that Ms. Thomas’s back problems preexisted her work accident at the Center. The Center also argues it should not be required to pay for Ms. Thomas’s “functional restoration” program because the Center denied preauthorization for the program, which ultimately proved unsuccessful.

FINDINGS OF FACT

The Appeals Board adopts Judge Hann’s findings of facts. The facts relevant to the issues raised by the Center’s motion for review are as follows:

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Prior to the work injury that gives rise to Ms. Thomas's workers' compensation claim, she had several non-work medical problems, including kidney disease that resulted in removal of a kidney in 2001. Then, while working as a developmentalist for the Center on May 2, 2002, Ms. Thomas attempted to pull a mentally-disabled resident up from the floor. The resident pulled back, causing Ms. Thomas to strain her lower back. Ms. Thomas's back pain persisted over the next year and she continued to receive treatment for her back, as well as for right-leg numbness that developed later. Dr. Sawchuck, her treating physician, recommended that she continue to receive medical care, including a functional restoration program.

The Center retained Dr. Dall to examine Ms. Thomas and to review all her medical records. In his detailed summary, Dr. Dall found nothing significant in the records regarding Ms. Thomas's kidney disease. Dr. Dall concurred that Ms. Thomas had suffered a lumbar strain as a result of the incident at the Center. However, he concluded that Ms. Thomas had reached stability from the injury during March 2003 and that no subsequent medical care was necessary to treat her work-related back strain.

In light of Dr. Sawchuck and Dr. Dall's disagreement regarding Ms. Thomas's need for additional medical care, Judge Hann referred that issue to an impartial panel of medical experts. The panel, which included specialists in neurology and orthopedics, examined Ms. Thomas, reviewed the opinions of Dr. Sawchuck and Dr. Dall, and reviewed the medical records Judge Hann had admitted into evidence. The panel concluded that a medical causal connection existed between Ms. Thomas's continuing back problems and her work accident at the Center. The panel also concluded that the medical care Ms. Thomas received, including the functional capacity program, was reasonably necessary to treat her work-related back problem.

DISCUSSION AND CONCLUSIONS OF LAW

An issue before the Appeals Board is whether Ms. Thomas's on-going medical care has been necessary to treat her work-related back injury. The Center argues that Judge Hann's exclusion of records related to Ms. Thomas's prior kidney disease unfairly impaired the Center's ability to show that the treatment was not necessary.

In considering Judge Hann's evidentiary ruling, the Appeals Board notes that the Commission and its ALJs have substantial discretion in such matters. Furthermore, § 34A-2-802 of the Utah Workers' Compensation Act provides that the Commission is not bound by the usual common law or statutory rules of evidence and that the Commission "may make its investigation in such manner as in **its judgment** is best calculated to ascertain the substantial rights of the parties and to carry out justly the spirit of the chapter." (Emphasis added.) In this case, the Center proffered several hundred pages of medical record, some of which related to Ms. Thomas's previous kidney disease. Although the Center argues that these records might be relevant to Ms. Thomas's need for on-going treatment of her work-related back problem, the Center has failed to provide any

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persuasive basis for that argument. It is particularly significant that no medical expert, including the Center's own medical consultant, has opined that the excluded records are medically relevant to Ms. Thomas's back condition. The Appeals Board therefore affirms Judge Hann's exclusion of the subject records.

As to the Center's argument that it should not be required to pay for the cost of Ms. Thomas's functional restoration program, the Appeals Board acknowledges that the Center denied preauthorization for the program and that the program ultimately failed to alleviate Ms. Thomas's back pain. However, the ultimate success of a medical program or procedure is not the test for determining whether it was necessary; many well-advised and medically supportable treatment regimes fail to accomplish their intended result. Consequently, the test of whether treatment is medically necessary is whether the treatment is supported by sound medical judgment. Based on the medical panel's impartial and expert opinion, the Appeals Board concludes that Ms. Thomas's ongoing treatment, including the functional restoration program, has been necessary to treat her work-related back injury. The Center is therefore liable for the cost of such treatment.

ORDER

The Appeals Board affirms Judge Hann's decision. It is so ordered.

Dated this 30th day of September, 2008.

Colleen S. Colton, Chair

Patricia S. Drawe

Joseph E. Hatch

NOTICE OF APPEAL RIGHTS

Any party may ask the Appeals Board of the Utah Labor Commission to reconsider this Order. Any such request for reconsideration must be received by the Appeals Board within 20 days of the date of this order. Alternatively, any party may appeal this order to the Utah Court of Appeals by filing a petition for review with the court. Any such petition for review must be received by the court within 30 days of the date of this order.

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